



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BARBARA TRUSS, NATALIA GOLSON,  
JACK KILGORE, and GABRIELA  
PETTIBONE, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

BAYER HEALTHCARE  
PHARMACEUTICALS INC.; BAYER  
HEALTHCARE LLC; BEIERSDORF, INC.;  
and BEIERSDORF NORTH AMERICA, INC.,  
Defendants.  
-----X

**ORDER**

21 CV 9845 (VB)

On March 25, 2022, defendants moved to dismiss the amended complaint. (Doc. #35).

Accordingly, it is hereby ORDERED that, by no later than April 7, 2022, plaintiffs must notify the Court by letter whether they (i) intend to file a second amended complaint in response to the motion to dismiss, or (ii) will rely on the amended complaint that is the subject of the motion to dismiss.

If plaintiffs elect not to file a second amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiffs a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendants' motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Cap. v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the briefing schedule so ordered by the Court. (See Doc. #27).

If plaintiffs elect to file a second amended complaint, they must file the second amended complaint by no later than 14 days after notifying the Court of their intent to do so. Within 21 days of such amendment, defendants may either: (i) file an answer to the second amended complaint; (ii) file a motion to dismiss the second amended complaint; or (iii) notify the Court by letter that they are relying on the initially filed motion to dismiss.

Dated: March 28, 2022  
White Plains, NY

SO ORDERED:

Vincent L. Briccetti  
United States District Judge